IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR.JUSTICE KURIAN JOSEPH
&
THE HONOURABLE MR. JUSTICE HARUN-UL-RASHID

WEDNESDAY, THE 14TH NOVEMBER 2007 / 23RD KARTHIKA 1929

LA.App..No. 1017 of 2001(D)

LAR.5/1996 of PRL.SUB COURT,IRINJALAKUDA
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APPELLANTS: CLAIMANTS
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1. **THRESSIAMMA , W/O. JOY CHIRAMAL KADUKUTTY.**

2. **ANTONY H/O. LILLY. CHIRAMAL KADUKUTTY.**

3. **BENNY ANTONY, S/O. ANTONY, CHIRAMAL, KADAKUTTY (DIED)**

4. **ANITHA, D/O. ANTONY, DO. DO.**

5. **DENNY S/O. ANTONY, DO. DO. DO.**

6. **AJITHA, D/O. ANTONY, CHIRAMAL, KADUKUTTY.**

7. **RENNY ANTONY, S/O. ANTONY DO. DO.**

ADDL. APPELLANTS 8 TP 10 ARE IMPLEADED.

8. **ANNIE P.P., AGED 36, W/O. LATE BENNY ANTONY CHIRAMEL HOUSE, KADUKUTTY, P.O. MUKUNDAPURAM TALUK, KALLOOR VADAKKUMMURI VILLAGE, THRISSUR DT.**

9. **BINY BENNY, AGED 14, MINOR, D/O. LATE BENNY ANTONY & ANNIE P.O., CHIRAMEL HOUSE, KADUKUTTY P.O., MUKUNDAPURAM TALUK, KALLOOR VADAKKUMURI VILLAGE, THRISSUR DT.**

L.A.A. NO.1017/2001

**10. BLOOMY TRESSA BENNY, AGED 10, MINOR
D/O. LATE BENNY ANTONY & ANNIE P.O.,
CHIRAMAL HOUSE, KADUKUTTY P.O. DO. DO.**

ADDL. APPELLATS 3 TO 10 ARE IMPLEADED AS LEGAL HEIRS OF THE DECEASED 3RD APPELLANT VIDE ORDER DT. 3.8.06 ON IA. 2179/06.

BY ADV. SRI.NELSON J.MANAYIL

RESPONDENTS: RESPONDENTS

**1. STATE OF KERALA, REP.BY THE
DISTRICT COLLE, TRISSUR.**

**2. KADUKUTTY GRAMA PANCHAYAT,
REP.BY SECRETARY.**

**BY GOVERNMENT PLEADER
SRI.P.K.ASHOKAN
SRI.M.R.VENUGOPAL**

THIS LAND ACQUISITION APPEAL HAVING BEEN FINALLY HEARD ON 14/11/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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KURIAN JOSEPH & HARUN-UL-RASHID, JJ.

L.A.A.No.1017 of 2001-D

Dated: November 14, 2007

JUDGMENT

Harun-Ul-Rashid, J.

This land acquisition appeal was filed by the claimants against the judgment and decree in LAR 5/1996 dated 31.1.2001 on the file of the Sub Court, Irinjalakuda. LAR 5/1996 was jointly tried along with seven other LAR cases and the court below passed a common judgment. By the impugned judgment the court below partly allowed the claim of the appellants and re-fixed the land value at the rate of Rs.8500/- per cent with the statutory benefits. The court below declined to grant any enhancement for the building situated in the acquired land.

2. The property under reference and other properties are acquired for the construction of the panchayat shopping complex and a bus-stand for the Kadukutty panchayat. The properties were acquired by a common notification published on 29.12.1992. The claimants claimed land value at the rate of Rs.30,000/- per cent. The land acquisition officer granted land value at the rate of Rs.5700/- per Are. After relying on the documents produced by the claimants, the court below re-fixed the land value at the rate of Rs.8500/- per cent. We find that no grounds are made out by the appellants/claimants for any further enhancement. The amount re-fixed by the court below is fair and adequate in the facts and circumstances of the case.

3. The grievance of the claimants is that the land acquisition officer has not given just and adequate compensation for the building in the acquired property. According to the claimants, they had spent Rs.3 lakhs for the construction of the building. The claimants had taken out a commission for valuing the building in the property. Ext.C1 is the report. According to the commissioner, the value of the building is Rs.2 lakhs. In Ext.C1 commission report the area of the building was shown as 1040 sq. feet. Exts.A6 and A7 are the estimate and plan of the building. The engineer was examined as PW.6. According to him Exts.A6 and A7 are prepared for the construction of the new building and that the cost on estimation is Rs.3 lakhs. The court below, after examining the commissioner's report as well as the evidence of the engineer, held that there is no proof for granting enhancement of the value of the building and held that the claimants are not entitled to get enhanced compensation for the building.

4. It is a fact that neither the land acquisition officer nor the court below had made an earnest attempt to ascertain the value of the building in the property which, according to the claimants, is a new building. The claimants have made effort to prove the market value of the building by examining the engineer and the commissioner and produced Ext.C1 report and the plan and estimate prepared by the engineer. In the facts and circumstances of the case, we are of the view that an opportunity shall be

granted to the appellants/claimants to prove that they are entitled to enhanced compensation for the building. The court below is directed to re-appreciate the evidence on record and also to give an opportunity to the appellants/claimants to adduce further evidence, if any.

5. The appellants have assessed the value of the building with the help of an expert and the report of the expert is produced along with this appeal with an application to receive the same in evidence. Since we have decided to remand the case, the court below can examine the assessment report prepared by the expert along with the materials on record while considering the question of valuation of the building.

In the result, the judgment and decree under appeal are modified and the case is remanded to the court below for fresh consideration. The court shall decide the value of the building in the acquired land afresh after affording an opportunity to both parties to adduce further evidence, if any. The court below shall dispose of the matter within six months from the date of receipt of a copy of this judgment.

KURIAN JOSEPH, JUDGE

HARUN-UL-RASHID, JUDGE

mt/-

KURIAN JOSEPH &
HARUN-UL-RASHID, JJ.

L.A.A. No.1017/2001-D

JUDGMENT

14.11.2007